IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3731 of 2007()

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AGAINST THE JUDGEMENT/ORDER IN WPC.2816/2007
CRIME NO.20/07 OF KARAMANA POLICE STATION

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PETITIONER/ACCUSED

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JOSE ANTONY, AGED 33 YEARS, S/O. ANTONY,
VALAIYAVEEDU HOUSE, NEAR CHANGANASSERY RAILWAY
STATION, KOTTAYAM DISTRICT.

BY ADV. SRI.PRADEESH CHACKO

RESPONDENTS: COMPLAINANTS

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1. CIRCLE INSPECTOR OF POLICE,
KARAMANA POLICE STATION, TRIVANDRUM.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. JAI GEOGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A.NO. 3731 OF 2007**

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Dated this the 20th day of June, 2007

**ORDER**

Application for anticipatory bail. A crime was registered, inter alia, under Secs.307 and 120-B of the IPC. Accused 1 to 5, who allegedly proceeded in a vehicle, had allegedly committed the offences. In the course of investigation, six more accused have been arrayed. The petitioner is not one of them. The petitioner's vehicle was allegedly used by the miscreants. The petitioner received a notice under Sec.160 of the Cr.P.C. to appear before the Investigating Officer. On that particular day, the petitioner had some difficulties and he could not appear. The Investigating Officer is not accepting the explanation of the petitioner and is threatening him that he shall be arrayed as an accused. In these circumstances, the petitioner has come before this Court with a prayer that directions under Sec.438 of the Cr.P.C. may be issued.

2. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that, at the moment, the petitioner is not arrayed as an accused at all; but the petitioner will have to be interrogated. His vehicle was used by the miscreants. The nexus/linkage, if any, of the petitioner with the offence will have to be ascertained. The possibility of his being arrayed as an accused cannot be ruled out, though, at the moment, there is no such proposal. It all depends on what turns upon the interrogation of the petitioner. The petitioner may not be permitted to arm himself with an order of anticipatory bail when he appears for examination in response to the notice under Sec.160 of the Cr.P.C.

3. The learned counsel for the petitioner submits that the Circle Inspector of Police/the Investigating Officer has arrayed many persons against whom the de facto complainant has no grievance at all. It is an arbitrary, unbridled and colourable exercise of the powers under the Code for the investigation given to an Investigating Officer. In these circumstances, appropriate directions may be issued, it is prayed.

4. I am not persuaded to agree that directions under

Sec.438 of the Cr.P.C. can or ought to be issued in the facts and circumstances of this case. But I am satisfied that appropriate other directions can be issued in the interests of justice.

5. This petition is, in these circumstances, allowed in part. It is directed that the petitioner shall appear before the 1st respondent at 10 a.m. on 27/6/07. He shall be questioned by the Investigating Officer. In case a decision is taken to arrest him after arraying him as an accused, after such questioning, the petitioner shall be produced before the learned Magistrate on that day itself. Needless to say, the petitioner shall be at liberty to apply for bail before the learned Magistrate and the learned Magistrate will have to consider such application expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge

In the result, this petition is allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 26/6/07. He shall be released on regular bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 27/6/07 and 28/6/07 and thereafter on all Mondays between 10 a.m. and 12 noon for a period of three months. Thereafter, he shall so make himself available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to

arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

(iv) If the petitioner were arrested prior to his surrender on 26/6/07 as directed in clause (i) above, he shall be released on his executing a bond for Rs.25,000/- without any sureties undertaking to appear before the learned Magistrate on 26/6/07.